

**LSKS** | LEVINE SULLIVAN  
KOCH & SCHULZ, LLP

1888 Sherman Street  
Suite 370  
Denver, CO 80203  
(303) 376-2400 | Phone  
(303) 376-2401 | Fax

Steve Zansberg  
(303) 376-2409  
szansberg@lsksllaw.com

November 19, 2014

VIA EMAIL ([kcollins@fec.gov](mailto:kcollins@fec.gov))

Federal Election Commission  
Office of Complaints Examination  
and Legal Administration  
Attn: Kim Collins, Paralegal  
999 E St., N.W.  
Washington, DC 20463

Re: MUR 6901

Dear Ms. Collins:

This firm represents MediaNews Group, Inc., and Prairie Mountain Publishing Company, the publisher of the *Longmont Daily Times-Call* newspaper. We write in response to the letter dated November 7, 2014 from Assistant General Counsel Jeff S. Jordan, addressed to The Times-Call and enclosing a Complaint filed by Vic Meyers for Congress with the Federal Election Commission (the "Commission"). Prairie Mountain Publishing Company is a subsidiary of Media News Group, Inc.. This letter is followed by the sworn verification of the facts recited by an authorized representative of Prairie Mountain Publishing Company.

Based upon the information the Vic Meyers campaign has provided in its Complaint, and the additional information furnished by this letter, it is clear that no action against *The Longmont Times-Call* by the Commission is authorized or warranted.

In this letter, we will provide a more complete factual background, including a description of *The Longmont Times-Call*'s operation as a daily newspaper, and the circumstances surrounding that newspaper's conduct at issue. We will then provide the Commission with the reasons why no action is authorized or warranted in this case.

#### I. FACTUAL BACKGROUND

Prairie Mountain Publishing Company is a limited liability partnership, organized under the laws of the state of Delaware, with its principal place of business in Boulder, Colorado. Prairie Mountain Publishing Company is a subsidiary of Media News Group, Inc., the nation's third largest newspaper holding company, by circulation. Prairie Mountain Publishing Company

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is the publisher of fourteen newspapers in Colorado. One of those newspapers, the *Longmont Daily Times-Call* ("*Times-Call*") is published daily in Longmont, Colorado, and has a weekday circulation of over 20,000.

On October 24, 2014 the *Daily Times-Call* published an editorial in which the newspaper's editorial board expressed its support for, and endorsement of, the current District Attorney for Weld County, Colorado – Ken Buck – to be elected to the United States House of Representatives to fill the seat being vacated by Congressman Corey Gardner.

**II. THE TIMES-CALL'S LEGAL POSITION: THE ACTIVITY WHICH IS THE SUBJECT OF THE COMPLAINT IS EXEMPT FROM ANY ENFORCEMENT ACTION**

Mr. Meyers' Complaint alleges that the editorial published by the *Times-Call*, endorsing candidate Ken Buck for the United States House of Representatives (to represent Colorado's Fourth congressional district) and its news reports covering Mr. Buck's campaign appearances are contributions prohibited by the Federal Election Campaign Act of 1971, as amended (the "Act"). 2 U.S.C. § 431, *et seq.*

The Act prohibits "any corporation whatever" from making any contribution or expenditure in connection with a federal election. 2 U.S.C. § 441b(a). The Act and Commission regulations define the terms "contribution" and "expenditure" to include any gift of money or "anything of value" for the purpose of influencing a federal election. 2 U.S.C. § 431(8)(A) and (9)(A); 11 C.F.R. §§ 100.52(a) and 100.111(a).

Even if the term "expenditure" or "contribution" were applicable to the *Times-Call*'s challenged actions, the Act provides that "The term 'expenditure' does not include . . . any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate." 2 U.S.C. § 431(9)(B)(i) (emphasis added). This exclusion is known as the "press exemption" or "media exemption." Accordingly, the Commission's regulations further provide that neither a "contribution" nor "expenditure" results from "any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet or electronic publication . . . unless the facility is owned or controlled by any political party, political committee, or candidate." 11 C.F.R. §§ 100.73, 100.132.

The legislative history of the media exemption indicates that Congress did not intend to "limit or burden in any way the First Amendment freedoms of the press and of association. [The exemption] assures the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns." H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. at 4

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(1974), cited and quoted with approval in *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990) ("The media exception ensures that the Act does not hinder or prevent the institutional press from reporting on, and publishing editorials about, newsworthy events.").

Thus, under the Act and the Commission's regulations, unless a press entity's facilities are owned or controlled by a political party, political committee, or candidate, the costs of distributing any news story, commentary, or editorial distributed through the qualifying media are neither contributions nor expenditures. Of course, as the publisher of a daily newspaper, Prairie Mountain Publishing Company d/b/a *The Longmont Times-Call*, undoubtedly qualifies as a media entity.

When considering complaints against media entities, courts have insisted that the Commission restrict its initial inquiry to whether the media exemption applies. MURs 5110 (KBHK Channel 45) and 5162 (ABC News); *see also Readers Digest Ass'n, Inc. v. FEC*, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981), *FEC v. Phillips Publishing, Inc.*, 517 F. Supp. 1308, 1312-13 (D.D.C. 1981). Only after concluding that the media exemption does not apply may the Commission commence an inquiry under its otherwise applicable "in connection with" (2 U.S.C. § 441b(a)) or "purpose of influencing" (2 U.S.C. § 431(8)(A),(9)(A)) standards. *Id.*

To determine whether the press exemption applies, the Commission applies the two-part analysis prescribed by *Reader's Digest Ass'n v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981), which requires it to establish:

- (A) That the entity is not owned or controlled by a political party, political committee, or candidate; and
- (B) That the entity is acting as a press entity in conducting the activity at issue (*i.e.*, whether the press entity is acting in its "legitimate press function").

*See also FEC v. Phillips Publ'g*, 517 F. Supp. 1308, 1312-13 (D.D.C. 1981); Advisory Opinions 2007-20 (XM Radio), 2005-19 (Inside Track), 2005-16 (Fired Up!), and 2004-07 (MTV). This two-stage process is mandated because the media exemption represents a fundamental limitation on the jurisdiction of this agency, and investigation of publishers can trespass on the First Amendment:

[F]reedom of the press is substantially eroded by investigation of the press, even if legal action is not taken following the investigation. Those concerns are particularly acute where a governmental entity is investigating the press in connection with the dissemination of political matter. These factors support the interpretation of the statutory exemption as barring even investigation of press activities which fall within the press exemption.

*Readers Digest*, 509 F. Supp. at 1214, cited with approval in MUR 5224 (Boston Globe).

In reference to the first prong of the above inquiry, neither Prairie Mountain Publishing Company nor the *Times-Call* is controlled by a political party, a political committee, or a candidate. Thus, the media exemption inquiry devolves upon whether the *Times-Call* was acting as a press entity in conducting the activity at issue, i.e., in its "legitimate press function."

Publishing an editorial endorsing a candidate for public office, and deciding which news stories to report and which not to publish are quintessentially the functions of the press. See, e.g. *Miami Herald Pub. Co v. Tornillo*, 418 U.S. 241, 256 (1974) ("The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public official -- whether fair or unfair -- constitute the exercise of editorial control and judgment."); *Columbia Broad Sys. v. Democratic Nat'l Party*, 412 U.S. 94, 117 (1973) ("The power of a privately owned newspaper to advance its own political, social, and economic views is bounded by only two factors: first, the acceptance of a sufficient number of readers -- and hence advertisers -- to assure financial success, and, second, the journalistic integrity of its editors and publishers"). And, as a result of the First Amendment's protection for freedom of the press, it is firmly established that "[c]ourts must be slow to intrude into the area of editorial judgment, not only with respect to choices of words, but also with respect to inclusions in or omissions from news stories." *Janklow v. Newsweek, Inc.*, 788 F.2d 1300, 1306 (8th Cir. 1986).

The Commission has recognized that the media exemption applies without regard to political "bias" in any form, including comments to support or oppose a candidate for office. *Internet Rulemaking*, 71 Fed. Reg. at 18609. The Commission has found the exemption applicable to activity that includes on-air interviews of candidates. Advisory Opinion 2004-07 (MTV).

Finally, while Vic Meyers for Congress appears to assert that candidate Meyers has a "right" to reply to the *Times-Call*'s editorial, and/or to "equal time" or space in the news coverage of the *Times-Call*, the United States Supreme Court has unequivocally rejected that a candidate for public office (or any member of the public) has any such "right" with respect to a newspaper; indeed, any government action overriding the editorial decision-making of newspaper publishers would unquestionably violate the First Amendment. *Miami Herald Pub. Co v. Tornillo*, 418 U.S. 241, 256 (1974) ("any such a compulsion to publish that which 'reason' tells [the newspaper editors] should not be published" is unconstitutional. A responsible press is an undoubtedly desirable goal, but press responsibility is not mandated by the Constitution, and, like many other virtues, it cannot be legislated.").

**III. CONCLUSION**

Because the conduct of the *Times-Call* that is the subject of the Complaint is exempt from the Commission's jurisdiction under the media exemption, the Commission should take no action on the Complaint.

Please do not hesitate to contact me if you have any questions regarding the foregoing or seek further information in connection with the matter.

Sincerely,

LEVINE SULLIVAN KOCH & SCHULZ,  
LLP

By: Steve Zandberg

cc: David Bralow, Esq.

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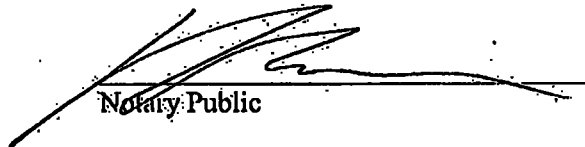
VERIFICATION

Albert Manzi., first being duly sworn, deposes and states that he is President and Chief Executive Officer for Prairie Mountain Publishing Company, LLC, and that the facts recited in the foregoing letter by Steven D. Zansberg of Levine Sullivan Koch & Schulz, LLP addressed to Kim Collins, Paralegal, Federal Election Commission, are true and correct according to his best knowledge, information, and belief.

  
ALBERT MANZI

STATE OF COLORADO     )  
                                      )ss.  
County of Boulder         )

SUBSCRIBED AND SWORN TO before me this 20th day of November, 2014.

  
Notary Public

My commission expires: \_\_\_\_\_

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